



CALFED  
BAY-DELTA  
PROGRAM

## Questions About ... Habitat Conservation Planning

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### What is a Habitat Conservation Plan (HCP)?

A Habitat Conservation Plan (HCP), under Section 10(a)(2)(A) of the Federal Endangered Species Act (ESA), is a planning document that is a mandatory component of an Incidental Take Permit application. An HCP must accompany an application for an Incidental Take Permit, and ensure that the effects of the authorized incidental take will be adequately minimized and mitigated to the maximum extent practicable.

### What's in an HCP?

An assessment of impacts likely to result from the proposed taking of one or more Federally listed species; measures the applicant will undertake to monitor, mitigate and minimize the impact on wildlife; funding sources that will be available to implement the plan; procedures to deal with unforeseen or extraordinary circumstances; and alternative actions that the applicant analyzed and the reasons why the applicant did not adopt such alternatives. Additional measures, if deemed necessary or appropriate, may be required.

### Why is an HCP needed for the CALFED program?

The non-Federal members of CALFED could receive assurances from an HCP under the ESA and the Department of the Interior's "No Surprises Policy" that no additional mitigation will be required except under extraordinary circumstances. This assurance then can become a part of the overall assurances package being developed for the CALFED program.

### What is "take"?

The Federal Endangered Species Act defines "take" as any action that would "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect" any threatened or endangered

species. Harm may include significant habitat modification that actually injures a species. There are no Federal prohibitions under the ESA for the take of listed plants on non-Federal lands, unless taking of those plants is in violation of State law or would accompany a project that requires Federal authorization, permits, or funding.

## What is an Incidental Take Permit?

Under strictly controlled circumstances the Endangered Species Act authorizes the issuance of permits to take protected species. Such permits are known as Incidental Take Permits because they authorize a take of protected species that may be incidental to, but not the purpose of, otherwise lawful activities.

## What does “recovery” mean?

Recovery is the process by which the decline of an endangered or threatened species is arrested or reversed, and threats neutralized so that its survival in the wild can be ensured. The goal of the Endangered Species Act is the recovery of listed species to levels where protection under ESA is no longer required.

## How many HCPs are being developed and what size areas do they cover?

As of June 1997, more than 217 HCPs covering 5.9 million acres have been approved and another 200 are in development. The number of HCPs and the size and complexity of the areas they cover have increased. Earlier HCPs were for planning areas of less than 1,000 acres. Today, of the 200 plans under development, approximately 25 exceed 10,000 acres, 25 exceed 100,000 acres, and 18 exceed 500,000 acres.

In California, there are approximately 60 HCPs in development; another 38 have been permitted. San Diego’s Multiple Species Conservation Plan is currently the most complex in the Nation covering 838,000 acres, addressing more species (85+), conserving a greater diversity of vegetation communities, and incorporating more local jurisdictions.

## What is the process for getting an HCP and incidental take permit?

The applicant is responsible for deciding whether to pursue the permit process, but U.S. Fish and Wildlife Service and National Marine Fisheries Service personnel will, upon request, provide detailed guidance and technical assistance throughout the process. The development of an HCP

in the CALFED Program will be coordinated with the Federal agency ESA consultation and satisfaction of the California ESA requirements.

## What is the timeline for development of this HCP?

CALFED is working to develop a draft HCP to be available for public review at the same time as the draft EIS for the entire program is available for review. The draft EIS is scheduled for release in January 1998, and a final EIS is scheduled to be released in November 1998.

## What kinds of actions are considered mitigation?

Mitigation actions may take many forms, such as preservation (via acquisition or conservation easement) of existing habitat; enhancement or restoration of degraded or former habitat; creation of new habitats; establishment of buffer areas around existing habitats; modification of land use practices; and restrictions on access. Mitigation measures reduce or address potential adverse effects of a proposed activity upon species covered by an HCP. It is the goal of the CALFED program to recover those species that occur primarily within the Delta and to contribute to the recovery of those species that rely on the Delta for some portion of their life cycle.

## What is the legal commitment of an HCP?

The elements of the HCP are made binding through the Incidental Take Permit and an Implementation Agreement. While Incidental Take Permits contain an expiration date, the mitigation identified in the HCP is in perpetuity for those impacts that are permanent.

## Who will approve the plan?

The FWS and NMFS Regional Directors will decide whether to issue an HCP permit based on findings that:

- The taking will be incidental to an otherwise lawful activity;
- the impacts will be minimized, and mitigated to the maximum extent practicable;
- adequate funding will be provided;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species;
- and any other necessary measures are met.

## Will the public get a chance to comment on the plan?

Yes. The law requires a 30-day period for comments from the public on the application for an incidental take permit. In this instance, the public comment period will be the same as that for the draft EIS and the public will have the opportunity to comment on the HCP as part of the programmatic EIR/EIS for the CALFED Program. All public comments must be taken into consideration in the final permit decision.

## Who will monitor the plan for compliance?

The U.S. Fish and Wildlife Service or National Marine Fisheries Service, or any party designated by the applicant and the FWS and NMFS, will monitor the project for compliance with the terms of an incidental take permit or HCP.

## What is the “No Surprises” policy?

The “No Surprises” policy, which provides the applicant with regulatory certainty, is one of the benefits provided to applicants in the HCP process. The policy assures the applicant that if unforeseen circumstances arise, the Fish and Wildlife Service and National Marine Fisheries Service will not require additional mitigation in the form of additional lands or funds from any permittee who is adequately implementing, or has implemented, an approved HCP, except in extraordinary circumstances. In addition, if the HCP was designed to provide an overall net benefit for covered species and contained measurable criteria that have been or are being met, the FWS and NMFS will not seek any additional benefits, even if there are extraordinary circumstances. The policy is intended to encourage HCP applicants to develop HCPs that provide an overall net benefit to affected species.

## How will funding be guaranteed?

Precise funding needs and mechanisms are not yet identified for the HCP. The CALFED agencies are developing funding strategies that will address overall funding needs for the entire CALFED program, including the actions described in the HCP.

## What will be the impact to endangered species?

The Fish and Wildlife Service strongly supports the concept of habitat conservation planning to address the conservation needs of sensitive species, both listed and unlisted. Large-scale habitat conservation plans allow for the conservation of multiple species within a defined area versus project-by-project mitigation that often results in small, non-viable patches of habitat.

## What will a Habitat Conservation Plan do for the fish and wildlife resources of the Delta?

A goal of the CALFED program is to recover species that are endemic to the Delta and restore the Delta ecosystem functions and processes that are necessary for a healthy ecosystem. The program and this HCP must assure that it does not appreciably reduce the survival and recovery of listed species or contribute to the need to list any currently unlisted species.

## Who are the applicants for this HCP?

The state CALFED agencies likely will be the applicants for this HCP. The Federal CALFED agencies will participate in plan development and will consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to assure all actions are coordinated with this HCP process.

## What types of activities are expected to be covered under each of the three HCP options suggested to date?

Any of the CALFED authorized actions may be covered under an HCP, including the four common programs and any storage and conveyance facilities identified through the alternatives analysis. The level of assurance offered under the HCP will be commensurate with the level of detail available in the programmatic EIS/EIR.

## What endangered and threatened species animals and plants are to be covered under this HCP?

The list of species to be covered by the HCP is still in development as project impacts are defined adequately to determine what species may be impacted by the proposed actions.

## Will this HCP follow recommended actions in existing recovery plans for listed species found in the Delta and other covered areas?

Yes. It is the goal of the CALFED program to recover those species found primarily in the Delta and to contribute to the recovery of those species that rely on the Delta for some portion of their

life cycle. Other species likely will benefit from program actions as specific restoration programs are identified and funded.

## How can I get involved?

There will be additional public workshops scheduled as a part of the overall public involvement process for CALFED.